

Message Text

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PAGE 01 BONN 08700 01 OF 02 190938 Z

15

ACTION EUR-25

INFO OCT-01 ADP-00 CIAE-00 DODE-00 NSAE-00 NSCE-00 SSO-00

USIE-00 RSR-01 INRE-00 PM-07 INR-10 L-03 NSC-10 PA-03

RSC-01 PRS-01 SS-15 NEA-10 TRSE-00 MBFR-03 SAJ-01

ACDA-19 IO-13 NIC-01 /124 W
----- 125018

O R 190928 Z JUN 73

FM AMEMBASSY BONN

TO USMISSION BERLIN IMMEDIATE

SECSTATE WASHDC IMMEDIATE 5777

INFO AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY MOSCOW

USMISSION NATO BRUSSELS

C O N F I D E N T I A L SECTION 01 OF 02 BONN 08700

E. O. 11652: GDS

TAGS: PGOV, PFOR, GW, GE, WB

SUBJECT: DRAFT BK/ L ON BASIC TREATY AND INNER- GERMAN
ARRANGEMENTS

REF: A) STATE 99882; B) BERLIN 865; C) BONN 5117

SUMMARY: AT BONN GROUP MEETING ON JUNE 18, FOREIGN
OFFICE REP (DERIX) INTRODUCED PROPOSED REDRAFT OF BK/ L
WHICH HE SAID HAD BEEN WORKED OUT BY REPRESENTATIVES OF
FOREIGN OFFICE AND FEDERAL CHANCELLERY IN BONN. SENAT
REP (MEICHSNER) SAID THE NEW DRAFT WAS ALSO ACCEPTABLE
TO THE SENAT, BUT THAT IT WAS NOT INTENDED TO INTRODUCE
IT OFFICIALLY IN BERLIN. ALLIED REPS TOOK NOTE OF THE
NEW DRAFT AND THE EXPLANATIONS FOR THE CHANGES PROVIDED
BY THE GERMAN SIDE. THEY SAID THEY WOULD HAVE TO
RESERVE COMMENT UNTIL THEY HAD GIVEN THE MATTER FURTHER
STUDY. DURING INFORMAL CONVERSATIONS AFTER THE BONN
GROUP MEETING, ALLIED REPS AGREED THAT THEY WOULD ASK
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PAGE 02 BONN 08700 01 OF 02 190938 Z

BERLIN LEGAL ADVISORS TO COMMENT ON THE DRAFT AND THAT THEY WOULD NOT BE WILLING TO DISCUSS IT IN THE BONN GROUP UNTIL THE COMMENTS HAD BEEN RECEIVED FROM BERLIN. ACTION REQUESTED: COMMENTS FROM BERLIN AND DEPARTMENT ON ATTACHED REDRAFT. END SUMMARY.

1. TEXT OF THE PROPOSED REDRAFT IS AS FOLLOWS:

1. THE ALLIED KOMMANDATURA RAISES NO OBJECTION TO THE APPLICATION TO THE WESTERN SECTORS OF BERLIN, SUBJECT TO THE RIGHTS AND RESPONSIBILITIES OF THE ALLIED AUTHORITIES FOR BERLIN, IN PARTICULAR THOSE INVOLVING SECURITY AND STATUS, OF THE LAW RELATING TO THE TREATY ON THE BASIS OF RELATIONS BETWEEN THE FEDERAL REPUBLIC OF GERMANY AND THE GERMAN DEMOCRATIC REPUBLIC, WHICH PROVIDES FOR THE APPLICATION TO THE WESTERN SECTORS OF BERLIN OF THE TREATY AND OF THE ARRANGEMENTS MADE IN CONNECTION WITH THE TREATY TO THE EXTENT THAT THEY RELATE TO THE WESTERN SECTORS OF BERLIN.

2. SUBJECT TO THE SAME RESERVATIONS, THE ALLIED KOMMANDATURA AUTHORIZES THE REPRESENTATION BY THE FEDERAL REPUBLIC OF GERMANY OF THE INTERESTS OF THE WESTERN SECTORS OF BERLIN WITH REGARD TO THE GERMAN DEMOCRATIC REPUBLIC. THE LETTER OF THE THREE HIGH COMMISSIONERS TO THE FEDERAL CHANCELLOR OF 26 MAY 1952 IN THE VERSION OF THE LETTER X OF 23 OCTOBER 1954 AND THE BKC/ L (55) 3 SHALL APPLY MUTATIS MUTANDIS.

3. SUBJECT TO THE ALLIED RIGHT OF CONTROL, THE ALLIED KOMMANDATURA IS READY ALSO TO AUTHORIZE THE EXTENSION TO THE WESTERN SECTORS OF BERLIN OF APPROPRIATE AGREEMENTS OF THE FEDERAL REPUBLIC OF GERMANY WITH THE GERMAN DEMOCRATIC REPUBLIC SUBJECT TO THE PROCEDURES LAID DOWN IN BKC/ L (52) 6 WHICH SHALL APPLY MUTATIS MUTANDIS. END TEXT

2. IN DISCUSSING THE CHANGES WHICH HAD BEEN MADE, SENAT REP (MEICHSNER) EXPLAINED THAT THE FEDERAL GOVERNMENT HAD THOUGHT IT BETTER TO NORM THE FIRST PARAGRAPH OF THE DRAFT TO THE BERLIN CLAUSE WHICH HAD BEEN USED IN THE ZUSTIMMUNGSGESETZ (BONN 17445, 12/22/72). MEICHSNER SAID A GREAT DEAL OF EFFORT HAD BEEN PUT INTO CONFIDENTIAL

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PAGE 03 BONN 08700 01 OF 02 190938 Z

FINDING THIS FORMULATION AND THAT THE GERMAN SIDE THOUGHT IT BEST DESCRIBED PROVISIONS MADE FOR EXTENSION OF THE TREATY AND ITS RELATED ARRANGEMENTS TO BERLIN. THE GERMAN SIDE ALSO THOUGHT THAT ITS DESCRIPTION OF RELATIONS OF THE BASIC TREATY TO BERLIN WAS MORE POSITIVE THAN THAT DRAFTED BY THE ALLIES (REF (B)), ESPECIALLY CONCERNING EXTENSION OF FOLLOW-

ON ARRANGEMENTS TO THE WSB. HE RECALLED THAT THE
FEDERAL GOVERNMENT WANTED TO GIVE AS MUCH EMPHASIS AS
POSSIBLE TO THIS POSSIBILITY.

3. CONCERNING THE SECOND PARAGRAPH OF THE NEW DRAFT,
THE FOREIGN OFFICE REP (DERIX) SAID THE FEDERAL
GOVERNMENT HAD THOUGHT IT BETTER TO PUT REPRESENTATION
OF BERLIN' S INTERESTS IN EAST GERMANY IN THE CONTEXT
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PAGE 01 BONN 08700 02 OF 02 190940 Z

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C O N F I D E N T I A L SECTION 02 OF 02 BONN 08700

OF THE FORMER AUTHORIZATION FOR FOREIGN REPRESENTATION
RATHER THAN TYING IT ONLY TO THE BILATERAL AGREEMENT
BETWEEN THE FRG AND GDR AS HAD BEEN DONE IN THE ALLIED
DRAFT. HE SAID THE FRG HAD ADDED THE WORDS " MUTATIS
MUTANDIS" AT THE END OF THE PARAGRAPH IN ORDER TO GET
AROUND THE FACT THAT THE DOCUMENTS REFERRED TO IN THE
PARAGRAPH REFERRED TO " INTERNATIONAL UNDERTAKINGS"
AND " REPRESENTATION ABROAD." SINCE THE FRG COULD NOT
CONSIDER THE GDR AS BEING A FOREIGN COUNTRY, THIS

QUALIFIER WAS NEEDED.

4. CONCERNING THE FINAL PARAGRAPH, MEICHSNER SAID BOTH THE FEDERAL GOVERNMENT AND THE SENAT BELIEVED THAT THE REQUIREMENTS FOR CONSULTATION CONTAINED IN BKC/ L 52 (6) WERE SUFFICIENT TO MEET ALLIED REQUIREMENTS. MEICHSNER ARGUED IN PARTICULAR THAT THE LAST PORTION OF THE THIRD PARAGRAPH OF THE ALLIED DRAFT (REF (B)) WOULD BE VIRTUALLY IMPOSSIBLE FOR THE SENAT TO LIVE UPTO AND AS SUCH, WAS FOR THE ALLIES ALMOST UNENFORCE-
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PAGE 02 BONN 08700 02 OF 02 190940 Z

ABLE.

5. ALLIED REPS SAID THEY WERE SURPRISED TO SEE AN ENTIRELY NEW DRAFT, SINCE THEY HAD HEARD NOTHING OF IT FROM THEIR MISSIONS IN BERLIN. MEICHSNER SAID THE MISSIONS HAD NOT BEEN INFORMED DIRECTLY, ALTHOUGH HE CONFIRMED THAT THE DRAFT ALSO HAD THE SUPPORT OF SENAT AUTHORITIES.

6. EMBASSY COMMENT: IN ADDITION TO SUBSTANTIVE QUESTIONS RAISED BY THE REDRAFT, WE ARE AGAIN INVOLVED WITH A CROSSING OF THE LINES OF COMMUNICATION BETWEEN BONN AND BERLIN. THE THREE ALLIED REPS AGREED AMONG THEMSELVES AFTER THE MEETING THAT THE THREE POWERS SHOULD NOT COMMENT ON THE REDRAFT IN THE BONN GROUP UNTIL VIEWS HAD BEEN RECEIVED FROM THE LEGAL ADVISORS IN BERLIN. WE WILL ALSO MAKE CLEAR ONCE AGAIN THAT SUCH DRAFTS SHOULD BE CONSULTED FIRST IN BERLIN AND NOT IN BONN, ESPECIALLY IF THEY ALSO REPRESENT THE VIEWS OF THE SENAT.

7. CONCERNING THE SUBSTANCES OF THE FRG CHANGES, WE UNDERSTAND THE GERMAN DESIRE FOR COMPREHENSIVE COVERAGE OF ARRANGEMENTS WHICH MAY BE EXTENDED TO BERLIN, BUT BELIEVE THEIR REDRAFT SACRIFICES CLARITY IN PURSUIT OF THIS GOAL. PERHAPS ANOTHER WAY OF MEETING THE PROBLEM WOULD BE TO BROADEN COVERAGE OF THE FIRST PARAGRAPH OF THE ALLIED DRAFT BY INSERTING THE WORDS " INTER ALIA " AFTER THE WORD " PROVIDE " IN THE SECOND SENTENCE OF THAT PARAGRAPH.

8. AS HAS BEEN SUGGESTED BY THE EMBASSY SEVERAL TIMES IN THE PAST (BONN 5157), WE AGREE WITH MEICHSNER'S VIEW THAT THE LONG LISTING OF CONDITIONS IN THE THIRD PARAGRAPH OF THE ALLIED DRAFT IS UNNECESSARY. SUCH LANGUAGE IS BOUND TO APPEAR TO THE FEDERAL GOVERNMENT AS AN ALLIED ATTEMPT TO EXTEND THEIR AUTHORITY IN BERLIN TO INCLUDE INTERNAL MATTERS OF GERMAN EASTERN POLICY. OUR VIEW CONTINUES TO BE THAT SUCH CONDITIONS ARE PROBABLY UNENFORCEABLE AND THAT IT IS NOT WORTH CREATING DIFFICULTIES WITH THE FEDERAL GOVERNMENT OVER

A PROVISION WHICH PROBABLY CANNOT BE CARRIED OUT IN
ANY CASE.

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PAGE 03 BONN 08700 02 OF 02 190940 Z

9. GIVEN THE CLEAR DIFFERENCE OF OPINION WHICH HAS
EMERGED, WE BELIEVE IT IS IN OUR INTEREST TO CONSULT
IN AS THOROUGH MANNER AS POSSIBLE ON THIS QUESTION.
ALTHOUGH IT WOULD HAVE BEEN ADVANTAGEOUS TO ISSUE THE
BK/ L BEFORE THE BASIC TREATY ENTERED INTO FORCE, OUR
LEGAL POSITION WILL NOT BE DAMAGED IF WE ALLOW OUR
DELIBERATIONS TO GO PAST THIS DEADLINE.
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